

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

---

DANIEL FLETCHER, #359391,

Plaintiff,

v.

Case No. 09-13904

MICHAEL BOUCHARD,

Defendant.

---

**OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR  
RECONSIDERATION, VACATING ORDER STRIKING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT, SETTING BRIEFING SCHEDULE,  
AND SUSPENDING PRETRIAL PROCEEDINGS**

On October 2, 2009, Plaintiff Daniel Fletcher filed a complaint with this court, alleging violations of the Constitution of the United States, actionable under 42 U.S.C. § 1983. Only Defendant Michael Bouchard remains as a Defendant in his official capacity as Sheriff of Oakland County. In order to resolve discovery issues, the court held a status conference on January 5, 2011. At that conference, Defendant indicated that a motion for summary judgment might be appropriate and requested leave to file such a motion in the event discussions with Plaintiff could not resolve the matter. The court indicated that such leave would be granted. Following the conclusion of the additional discovery, Defendant filed a motion for summary judgment on April 13, 2011, without requesting leave or noting the earlier discussion. On April 18, 2011, the court struck Defendant's motion as untimely. (4/28/2011 Order.) Defendant moved for reconsideration on April 19, 2011, which motion is pending before this court. For the reasons stated below, the court will grant Defendant's motion for reconsideration.

Eastern District of Michigan Local Rule 7.1 provides that a motion for reconsideration shall be granted only upon a showing of a “palpable defect” that misled the court and that correcting the defect would lead to a different disposition. E.D. Mich. LR 7.1(h)(3). “A ‘palpable defect’ is ‘a defect that is obvious, clear, unmistakable, manifest, or plain.’” *United States v. Lockett*, 328 F. Supp. 2d 682, 684 (E.D. Mich. 2004) (citing *United States v. Cican*, 156 F. Supp. 2d 661, 668 (E.D. Mich. 2001)). Defendant has noted that the court had previously indicated at the January 5, 2011, conference that a motion for summary judgment filed after further discovery would be allowed. Such motion was to follow a letter by Defendant to Plaintiff setting forth the grounds for summary judgment, which Defendant sent on January 27, 2011. (Mot. Recon. Ex. 1.) Had this been presented to the court prior to the order striking Defendant’s motion for summary judgment as untimely, the motion would not have been so stricken. Therefore, Defendant’s motion for reconsideration will be granted, and the motion striking Defendant’s motion for summary judgment will be vacated.

Moving forward, the parties have agreed that Plaintiff will file a response to Defendant’s motion for summary judgment by **May 16, 2011**. No reply is anticipated at this time, but Defendant is directed to inform the court as soon as is reasonably practicable following Plaintiff’s response if a reply becomes necessary. Absent a request to file a reply, the court will proceed to consider the motion. During the pendency of Defendant’s motion for summary judgment, all pretrial proceedings will be suspended. A revised scheduling order will issue if the motion for summary judgment is denied. Accordingly,

IT IS ORDERED that Defendant's motion for reconsideration [Dkt # 44] is GRANTED.

IT IS FURTHER ORDERED that the court's "Order Striking Defendant's Motion for Summary Judgment" [Dkt. # 43] is VACATED.

IT IS FURTHER ORDERED that Plaintiff respond to Defendant's motion for summary judgment on or before **May 16, 2011**. No reply is anticipated absent compelling circumstances.

Finally, IT IS ORDERED that final pretrial order, conferences and the trial in the above case are SUSPENDED without continuation date. Final pretrial and trial will be scheduled upon the issuance of a ruling on Defendant's motion for summary judgment.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: April 27, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 27, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522